

Unapproved and Subject to Change
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

December 9, 2004

Call to order: Chairwoman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:57 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairwoman Randolph, Commissioners Philip Blair, Sheridan Downey, Pam Karlan, and Tom Knox were present.

Item #1. Public Comment.

None.

Consent Calendar

Commissioner Knox moved approval of the following items:

Item #2. Approval of the November 4, 2004, Commission Meeting Minutes.

Item #3. In the Matter of the City of Inglewood, FPPC No. 01/112. (10 counts).

Item #4. In the Matter of Frank Aiello, FPPC No. 02/427. (2 counts).

Item #5. In the Matter of Louis Byrd, Committee to Elect Louis Byrd, Ianthe Byrd and Shirley Byrd, FPPC No: 02/189. (1 count).

Item #6. In the Matter of Jerry Rindone, Jerry Rindone for City Council, and Sandra Hodge, FPPC No. 01/596. (1 count).

Item #7. In the Matter of Lisa Ross-Woolson, FPPC No. 04/177. (5 counts).

Item #8. In the Matter of Larry C. Wahl, FPPC No. 99/097. (3 counts).

Item #9. Failure to Timely File Major Donor Campaign Statements.

a. In the Matter of Bohn & Bohn, Robert H. Bohn Jr., and Robert H Bohn, FPPC No. 03/835. (1 count).

Item #10. Failure to Timely File Statements of Economic Interests.

a. In the Matter of Luis Pulido, FPPC No. 04/599. (1count).

b. In the Matter of Robert Hattoy, FPPC No. 04/423. (1 count).

- c. **In the Matter of Russell Stewart, FPPC File No. 04/497.** (1 count).
- d. **In the Matter of Ralph Morrow, FPPC File No. 04/348.** (1 count).
- e. **In the Matter of James Langhorne, FPPC File No. 04/332.** (1 count).
- f. **In the Matter of Robert Boileau, FPPC No. 03/648.** (1 count).
- g. **In the Matter of Ariane Terlet, FPPC No. 03/860.** (1 count).

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion carried by a 5-0 vote.

Item Removed From Consent

There were none.

Item #11. Domestic Partnerships – Adoption of Proposed Regulation 18229.

Commission Counsel Natalie Bocanegra explained that AB 205 (Ch. 421, Stats. 2003) will take effect on January 1, 2005. This bill amended the Family Code to provide that registered domestic partners have the same rights and responsibilities as spouses. This issue was addressed by the commission in its consideration of the *Roberts* opinion. The proposed regulation 18229 codifies that opinion, which concludes that the term “spouse” includes a registered domestic partner for purposes of the Political Reform Act (Act), based on the commission’s past application of family law concepts in interpreting provisions of the Act. Ms. Bocanegra noted that public comment was received from Micheal Martello, who supports codification of the opinion. In addition, there was public comment in support of this concept during the commission’s consideration of the *Roberts* opinion.

Ms. Bocanegra added that the conclusion of the *Roberts* opinion extends to several areas of the Act, including its definitional provisions, disqualification and disclosure, campaign provisions, lobbying provisions, and two other specialized conflict-of-interest rules pertaining to loans and state contracts. Generally, these sections contain language that includes the term “spouse” or another term that is defined by the term “spouse,” specifically the terms “immediate family” and “household.”

Ms. Bocanegra continued to explain that the Commission has two options before it. Option 1 is the short version of the proposed regulation. It states that the registered domestic partner of an individual is deemed to be the “spouse” of the individual for purposes of the Act and its implementing regulations. It includes optional language specifying that the regulation applies to registered domestic partnerships recognized by state law. Option 2 is the longer version of the proposed regulation and does the same thing as option 1, but it also provides a non-exclusive list of examples of some of the purposes for which a registered domestic partner would be deemed a

“spouse.” Both versions have the same legal effect, but staff recommends option 1, the simpler approach, and also recommends inclusion of the bracketed state law language.

Commissioner Knox was concerned with the language by which the Commission would, via regulation, deem a registered domestic partner to be a spouse. He believed that the shorthand of the proposed language does not capture the nuance that California voters are trying to capture, directly by proposition and also through the legislature. The law now says that marriage is a relationship between a man and a woman; on the other hand, California has clearly acknowledged registered domestic partnerships as appropriate legal relationships. Commissioner Knox offered alternative language which would eliminate the “deemed” language and simply says that for the purposes of the Act, registered domestic partners shall have the same rights and duties as spouses. He stated that this alternative is consistent with the registered domestic partnership law adopted by the Legislature.

Chairman Randolph said she had another alternative, but she first suggested rejecting staff’s option 2 because it is too confusing.

Commissioner Downey said he had the reverse perspective, that option 2 will help those who are not political professionals by highlighting areas where the significance of the regulation has the most impact. It says specifically that it is not a limited list, and he believes it might be useful for someone delving into the regulations for the first time.

Chairman Randolph countered that she thought that most people delve into the forms and manuals before delving into the regulations. So, as long as people understand that when something in the forms and manuals refers to “spouse” or “immediate family” domestic partners would be included, then that seems to be enough. She added, however, that option 2 could be kept on the table.

Chairman Randolph continued to explain her alternative version, which she said better addressed the notion that the commission is defining the term “spouse” for the purposes of the Act. The discussion during the *Roberts* opinion included whether the commission had the authority to define the word “spouse.” She prefers this alternative language, which mirrors the language in the opinion, which said that the term “spouse” “shall include registered domestic partners recognized by state law. She said she would support either her version, Commissioner Knox’s version, or option 1 because they all have the same legal effect, but she has a slight preference for her own version because it is more consistent with the notion that the commission is defining the term “spouse” for the purposes of the Act.

Commissioner Knox commented that the Chairman’s version suffers from the same drawback as the options prepared by staff. He stated that equating of the word “spouse” to registered domestic partner crosses a wavy line that California voters have tried to draw on this issue. Saying that they have the same rights is a distinction without a difference in terms of the Act, and it has other ramifications in this part of a culture war in which this commission does not have any stake.

Commissioner Karlan opined that the California Family Code does not define the word “spouse” but it defines the word “marriage” as between a man and a woman, so she is not sure why saying domestic partners are “spouses” undercuts any distinction that the California voters are trying to draw. If the commission said, “for the purposes of this title, the term ‘marriage’ includes domestic partnership,” that might trench on the line that has been drawn. However, here, the word “spouse” can apply to either the two people in a marriage or the two people in a registered domestic partnership equally. Thus, she has no problem with defining the word “spouse” and does not think it trenches on the line that is being drawn between AB 205 and the California Family Code, if indeed that line exists and is constitutional.

Commissioner Knox said he agreed that the Family Code does not define “spouse” to mean the members of a relationship between a man and a woman, but he thought that equating “spouse” to a registered domestic partner does cross a line that the voters are working their way toward defining.

Commissioner Downey suggested skipping option 2 and explained that there seem to be three paths leading to three identical conclusions in interpreting the Act. He said that the commission is, in fact, equating registered domestic partners with spouses as the word “spouse” is used in the Act, and suggested going with the Chairman’s approach, which seems honest, straightforward, and effective.

Commissioner Downey moved the adoption of the Chairman’s draft of regulation 18229.

Commissioner Karlan seconded.

Commissioners Blair, Downey, Karlan, and Chair Randolph voted, “Aye.” Commissioner Knox voted, “No.” The motion passed by a 4-1 vote.

Item #12. Biennial Gift Limit Adjustment. Adoption of Amendments to Regulations 18703.4, 18730, 18940.2, 18942.1 and 18943.

Political Reform Consultant Hal Dasinger made a few technical corrections to 18730 that are not mentioned in the staff memo. On page 6, line 13, relating to regulation 18730, the language should read “... equals or exceeds \$2,000.” On page 15, line 19, relating to regulation 18730, the language should no longer refer to section 91015 of the Act because 91015 was repealed. The reference should stop at 91014.

Commissioner Blair moved to adopt the amendments to regulations 18703.4, 18730, 18940.2, 18942.1 and 18943.

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion passed by a 5-0 vote.

Item #13. Cost of Living Adjustment for Campaign Contribution Limits and Voluntary Expenditure Ceilings. Adoption of Amendments to Regulation 18545.

Commissioner Knox moved to adopt amendments to regulation 18545.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion passed by a 5-0 vote.

Item #14. Approval of Revised Statement of Economic Interests Forms and Instructions for 2004/05. Staff:

Technical Assistance Division Chief Carla Wardlow commented that she heard from a political attorney earlier in the morning who raised some issues about a part of the instructions, however, Ms. Wardlow added that she recommends making those suggested changes in the next round at the end of next year. The attorney’s comments were relating to instructions that have been in the forms for many years and are not new changes, and staff will look at making those changes next year.

Commissioner Blair moved to approve the revised Statement of Economic Interests forms and instructions for 2004/05.

Commissioner Knox seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion passed by a 5-0 vote.

Item #15. Approval of Revised Campaign Disclosure Forms for 2005.

Commissioner Downey moved to approve the revised Campaign Disclosure forms for 2005.

Commissioner Blair seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion passed by a 5-0 vote.

Item #16. Approval of Filing Officer Guidelines for Statements of Economic Interests (Form 700).

Technical Assistance Division Chief Carla Wardlow explained that this item grew out of some Commission projects in 2002 relating to conflicts-of-interest and disclosure. One of those

projects was to examine the methods that agencies used to identify their designated employees in their conflict-of-interest code. In 2002, the Commission decided to allow agencies to implement their own methods for identifying designated positions. During that process, another issue arose regarding how filing officers are implementing their duties to notify filers of their filing obligations, particularly notifying non-filers. In 2003, the Commission directed staff to prepare written guidelines for consideration. These are the guidelines before the commission.

Ms. Wardlow said the Act requires filing officers to notify promptly all persons who have failed to file a report and to report apparent violations to the appropriate enforcement authority. There was an interested persons meeting in July, and these guidelines are the result of that project. The guidelines include recommendations to the filing officers for timelines in which the commission recommends that non-filers be processed. Surveys show a clear dividing line between small agencies that have 50 or fewer filers and larger agencies at around 800 filers. For 50 or fewer filers, staff recommends that the forms be processed in 30-day increments, so the first non-filer notice should go out within 30 days, the second in another 30 days, and if the person still has not filed, then that information should be referred to the appropriate enforcement authority within another 30 days. Thus, based on an April 1 filing deadline, this means the enforcement referral should be sent in by July 1 or earlier. For agencies with more than 50 filers, the timeline is 120 days for the first notice, another 60 days for the second, and 45 days for the enforcement referral. An April 1 filing deadline would put the enforcement referral date at November 15. Most agencies likely do not need that much time; however, the commission had to include its own processing time for the 15,000 or so statements that it receives. It takes the commission 120 days to log and process the forms. The guidelines provide some sample language for the non-filer notification letters, and they outline the documentation that each agency should collect and submit upon making an enforcement referral.

Chairman Randolph said she thought the guidelines were very good. She was concerned about the enforcement referral language. The guidelines consistently use the term “should,” except the enforcement referral language, where it uses the word “must.” She suggested adding the language from the statute so that it reads that filing officers are “required to report apparent violations for failure to file” and that “the filing officer should refer to the FPPC...” This way, it covers the fact that they are required to make an enforcement referral, but it would be consistent with the tone of the rest of the guidelines in that they are guidelines.

Commissioner Downey asked why the words “at least” were used to define the number of times notice must be sent.

Ms. Wardlow responded that the Enforcement division requires that a filing officer send a non-filer at least two written notices before the commission will take enforcement action. A filing officer could send more if they choose.

Commissioner Karlan moved to approve the filing officer guidelines for statements of economic interests as modified by Chairman Randolph’s suggestions.

Commissioner Downey seconded the motion.

Commissioners Blair, Downey, Karlan, Knox, and Chair Randolph voted, “Aye.” The motion passed by a 5-0 vote.

Item #17. Approval of 2005 Regulatory Priorities.

Assistant General Counsel John Wallace said that the commission has seen most of the items on the regulatory calendar, and he wanted to address a few of the new items. First, item A1 concerns the McCain-Feingold federal law regarding campaigns which has some impact on allocation of expenditures by entities that support both federal and state candidates. Staff has received several questions about how McCain-Feingold interacts with state law, so staff has added a project where the Commission will set guidelines to clarify how the two laws will interact.

Mr. Wallace explained that the second additional item began from an advice letter request from the San Francisco City Attorney’s office. San Francisco has a ranked-choice voting system, and in their elections, it would not be uncommon for one candidate to suggest where other candidates are ranked. On the other hand, the Act prohibits independent expenditures by candidates on behalf of other candidates. San Francisco is asking how that would apply in their election system. Thus, staff has added an opinion request for the Commission to consider in 2005.

Mr. Wallace added that the third new item concerns the University of California (UC). The general process for promulgation of a conflict-of-interest code adoption or amendment is to comply with the Administrative Procedures Act (APA), which requires a specified public notice before the code can be adopted. Certain state agencies, such as the UC, are not subject to the APA, and as a result, they do not go through the same notice requirements that other state agencies do. While the Commission has consented to their alternate procedures, the process has never been identified in a regulation. Staff believes it would be prudent to add a regulation specific to agencies not subject to the APA.

Mr. Wallace identified one item that staff would like to remove from the calendar and perhaps hold it for another year. This item is an amendment to the Commission’s conflict-of-interest regulations which would clarify an issue in the government salary exception. Under the regulation, a public official cannot make a decision that affects themselves or their spouse unless it only affects their government salary. Even within that exception, if it affects them uniquely, the exception will not apply. This project would deal with situations where either the official or his or her spouse is the only person in a job classification where a raise would only apply to the one person, or in an appointment situation where the spouse is appointed and receives benefits by virtue of the appointment. In looking at the different projects on the calendar, staff thought that this problem arises less frequently than the others and therefore recommends that it be pulled from the calendar.

Chairman Randolph said this item does not need a motion, only consensus, which was given.

Item #18. Legislative Proposals for 2005.

Executive Director Mark Krausse said there are 18 legislative proposals and highlighted 7 of them during the meeting. First, item A2 attempts to set a definition of how to determine the type of committee when it may have activity at state, county, and city levels. This proposal includes a 50% +1 threshold, so that if a committee spends more than 50% of its non-administrative money at a given level, then the committee will be classified at that level. If a committee's spending does not exceed 50% at any one level, then the committee defaults to a state committee classification.

Mr. Krausse continued with item B1, which he said arose through the advice process. Proposition 34 has a provision that says a candidate may collect a contribution for a primary and a general election if the candidate sets aside the contributions and uses these contributions for their separate elections. Comments were received from committee holders who have debt in the primary election committee but surplus left over in the general election committee and who would like to use money from the general to pay debt in the primary prior to the general election. Staff have read the statute to say that this is not allowed. Staff would like to amend the statute to say that not only could a committee do this, but it must do this before transferring campaign funds to a future election committee.

Mr. Krausse advised that item D1 creates a presumption in the advertising disclosure area that a contributor to a primarily formed committee knows that their contribution is going to that committee and for that purpose, and therefore, their name being disclosed in the advertising disclosure portions of our law is justifiable. A contributor to a general purpose committee, where the contributor may be giving to the committee for some purpose unrelated to a subsequent advertisement for which their money is used and in which their name would have to be disclosed, could say in writing that they do not want their money used for an advertisement. Then, that money would have to be set aside, not used, and the contributor would be protected from having their name appear in an advertisement in the disclosure portion of an advertisement when they had no idea it was going to be used for that particular purpose.

Mr. Krausse added that item E1 relates to an enforcement issue that came up when candidates collected contributions above the limit, and the Commission's only penalty was the current fine of \$5,000. This proposal seeks to allow the Commission to fine up to the amount of the contribution in an administrative action or three times the amount of the contribution in a civil action. Item E2 deals with lawsuits filed under the private attorney general portion of the Act. The statute currently requires parties in that type of action to serve the Commission with a copy, but it specifically says that the filer will not be denied their remedy for failure to give that copy. This proposal would change the statute to say that the filer will be denied their remedy until they provide the Commission with a copy so that the Commission is made aware of the litigation.

Mr. Krausse moved on to the conflicts consolidation proposals. This included item F1, the Government Code Section 1090, three-year pilot project. The current language says this would be provided for in a budget appropriation, which may be one way to go, or another method may be to put an appropriation in the bill. Item F2, the Public Contract Code amendment, looks substantive, but it really just consists of shifting paragraphs to move parts of the Public Contract

Code into the Act and consolidate them into fewer sections. There are no substantive changes made by this amendment.

Item #19. Executive Director's Report. Staff: Executive Director Mark Krausse.

Mr. Krausse had nothing to add.

Chairman Randolph added that the Commission is losing two employees, Hal Dasinger and Steve Meinrath, who are going on to do other things – and wishes them well.

Item #20. Litigation Report. Staff: General Counsel Luisa Menchaca and Senior Commission Counsel Larry Woodlock.

Commissioners went into closed session at 10:28 a.m.

The meeting adjourned at 11:00 a.m.

Dated: January 3, 2004.

Respectfully submitted,

Whitney Barazoto
Commission Assistant

Approved by:

Chair Randolph